

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Linda Harap

v.

Case No. 06-cv-296-PB

Officer Jessica Lozeau,  
Town of Bedford

O R D E R

Bedford Police Officer Jessica Lozeau has moved to dismiss three of the complaint's nine counts for failure to state a claim.

Whether plaintiff's federal constitutional claim should be brought under the Fourth Amendment or the Fourteenth Amendment's due process clause and whether plaintiff is entitled to recover damages for a violation of her rights under the state constitution are complex legal questions that have not been adequately briefed. Accordingly, I decline to resolve them now.

Lozeau's argument that plaintiff cannot recover for emotional distress that was proximately caused by Lozeau's

alleged negligence, even if the facts alleged in the complaint are true, is clearly wrong.

The motion to dismiss (doc. no. 7) is denied. The clerk shall set a status conference.

SO ORDERED.

/s/Paul Barbadoro  
Paul Barbadoro  
United States District Judge

May 2, 2007

cc: Arpiar Saunders, Jr., Esq.  
Donald E. Gardner, Esq.  
Brian J.S. Cullen, Esq.  
Catherine Costanzo, Esq.